

No. 8235

IN THE

UNITED STATES

CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT

LOUIE J. ANTONSEN,
Plaintiff-Appellant,

VS.

C. C. HEDRICK, individually, and doing
business under the assumed name and
style of PAPER EXCELSIOR & PAD
COMPANY,

Defendant-Appellee.

UPON APPEAL FROM THE DISTRICT COURT OF THE
UNITED STATES FOR THE DISTRICT OF OREGON

PETITION TO CLARIFY OPINION OF
APRIL 1, 1937 OF THIS COURT OR
FOR REHEARING

CLARENCE W. PIERCE
810 American Bank Bldg.
Seattle, Washington.

Solicitor for Appellant.

APR 26 1937

No. 8235

IN THE

UNITED STATES

CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT

LOUIE J. ANTONSEN,
Plaintiff-Appellant,

VS.

C. C. HEDRICK, individually, and doing
business under the assumed name and
style of PAPER EXCELSIOR & PAD
COMPANY,

Defendant-Appellee.

UPON APPEAL FROM THE DISTRICT COURT OF THE
UNITED STATES FOR THE DISTRICT OF OREGON

PETITION TO CLARIFY OPINION OF
APRIL 1, 1937 OF THIS COURT OR
FOR REHEARING

CLARENCE W. PIERCE
810 American Bank Bldg.
Seattle, Washington.
Solicitor for Appellant.

pellant's patent. Damages for infringement are thereby denied him.

However, it has never been the law in any jurisdiction to invalidate a patent merely because the Plaintiff was unsuccessful in establishing infringement. In the instant case, the device of appellee having been found not to infringe Plaintiff's patent, cannot therefore be held to anticipate Plaintiff's patent, the machine at all times remaining unchanged. Obviously, it would be a gross injustice to permit such an opinion to stand in view of the express finding that appellee's device did not infringe the patent in suit. Such a position is untenable, unsound and contradictory. It is respectfully submitted that the opinion of April 1st should be modified so as to reverse that part of the District Court decision which invalidated appellant's patent.

This petition may be considered as one to have this Court clarify its opinion of April 1, 1937, or to have a rehearing granted on the appeal.

Counsel will gladly appear for oral argument, if this Court should desire.

Respectfully submitted,

CLARENCE W. PIERCE,

Attorney for Appellant.